

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 16126 of Keyvan Ahdut, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 501.1) to allow auto tire and battery service (muffler, oil change, tune-ups, sound systems and glass repair) on the lot, basement, first and second floors in an SP-2 District at premises 1220 13<sup>th</sup> Street, N.W. (Square 245, Lot 834.

**HEARING DATE: June 5, 1996**

**DECISION DATE: July 10, 1996**

**ORDER**

**SUMMARY OF EVIDENCE:**

The site is located on the western side of 13<sup>th</sup> Street N.W., between M and N Streets. It is comprised of one lot of record (Lot 834) containing 9,570 square feet of land area. The site is improved with a two-story plus basement masonry structure constructed in 1928 and previously used for vehicle sales and repair. The building contains 20,000 square feet of space and is used for offices, vehicle lifts and pits, and storage facilities. A narrow parking area along the north side of the building is also on the site. A 15-foot wide public alley is situated along the site's north property line abutting the parking area. A 30-foot wide alley system is located at the rear of the site.

The site is located in an SP-2 zone district. This zone permits matter-of-right medium/high density development of all kinds of residential uses. Limited office space for nonprofit organizations, trade associations, and professionals, is permitted as a special exception with Board of Zoning Adjustment (BZA) approval.

The area surrounding the site has a mix of uses including residential, commercial, and institutional. Thomas Circle is located one block to the southwest of the site, while Logan Circle is situated approximately two blocks to the north along 13<sup>th</sup> Street N.W. The Ramada Plaza Hotel is located in the same square west of the subject site and facing Thomas Circle.

The applicant is requesting a variance from the use provisions of Subsection 501.1 of 11 DCMR to allow an automobile parts and service/retail establishment in an SP-2 District. The proposed services would include an auto tire and battery service center. Specifically, the services may include muffler repair; oil changes; tune-ups; sound system installation and glass repair. The applicant intends to use all three floors of the existing building, as well as the on-site parking lot for this purpose.

An automobile parts and service/retail establishment is not allowed in an SP-2 District.

**Issues and Arguments:**

**1. Whether there exists a unique or exceptional situation or condition related to the property that creates an undue hardship for the applicant in complying with the Zoning Regulations?**

The applicant argued that the subject site is unique and affected by the following exceptional conditions.

- (a) The property was built nearly 70 years ago for automobile related services. As a result of its unique characteristics, layout and configuration, the property is solely intended and appropriate for automobile servicing.
- (b) The applicant testified that he tried unsuccessfully for three years to lease the property for a conforming use.
- (c) He testified that if this variance were to be denied, thereby requiring him to convert the building to SP-2 use, this would cause him to suffer an undue hardship.

**2. Whether the property can be used for any other purpose permitted under the Zoning Regulations?**

The applicant testified that the building's design and construction make it ideal for the proposed use, in fact any other use would require significant and costly renovation. He testified that the building comprising approximately 20,000 square feet, has three large bay doors allowing for vehicles to easily enter, drive through for service and exit. Inside the building is a hydraulic vehicle lift and three bay areas designed for servicing vehicles.

In addition there is a heavy-duty elevator, a reinforced concrete slab floor for servicing batteries and storage areas for tires, batteries and other auto parts. Access to the parking lot and building is facilitated via a fifteen-foot wide alley leading in from 13<sup>th</sup> Street and around the rear of the building. The second floor of the building would be used for the service center's administrative offices.

Because of these characteristics, the applicant states that extensive and costly renovation would have to be undertaken to make the subject property suitable for any other use.

**3. Whether granting the application would be of substantial detriment to the public good?**

The applicant testified that the property that is currently vacant serves as a haven for vagrants, drug users and prostitutes. The sidewalk and street are frequently littered with

empty cans and bottles thrown by those vagrants who sit on the property's front steps, drinking alcohol. The petitioner testified that he would make great effort to keep the area around his property well lit at night and free of litter.

The applicant testified that reports from a traffic engineer as well as the Office of Planning state that granting this use variance will not generate any severe adverse area impacts in terms of traffic, parking demand, noise, environmental quality or other objectionable conditions.

A letter of opposition was submitted to the Board on June 2, 1996, signed by Robert D. Ebel, Advisory Neighborhood Commissioner for the Single Member District (2F-03) in which the subject property is located. The letter stated that there was general opposition to the project and it was not wanted in the neighborhood. It also indicated that the proposed hours of operation had not been provided, and the applicant had a poor track record based on the quality of a similar type of business operated by him at 8<sup>th</sup> and O Streets, N.W.

The applicant indicated that the proposed hours of operation would be 9:00 a.m. to 5:00 p.m. and that he has no connection with, or interest in, the business located at 8<sup>th</sup> and O Streets N.W., as stated by Commissioner Ebel.

In a letter to the Board, dated June 1996, Christine L. Young, President of the Logan Circle Community Association (LCCA), stated that the association voted unanimously to oppose the application. The major reasons were:

The proposed use is inappropriate given its location on a small commercial strip in a residential neighborhood with commercial establishments that generally support the residential community;

There is an over-abundance of similar commercial establishments offering auto repairs in the immediate area; and

The proposed use would have a serious adverse impact on an area that is already plagued by illegal activities such as prostitution and drug dealing.

**4. Whether allowing the proposed use will impair the intent, purpose and integrity of the zone plan.?**

The applicant argued that granting the variance would not impair the intent, purpose and integrity of the Zoning Regulations. He testified that in its current condition, the property is not only an eyesore, but also a potential danger to the safety and welfare of the surrounding community. The applicant testified that he anticipates that the proposed use would not conflict with other businesses in the immediate area and that the business he is proposing would assist in revitalizing the community.

Owners across the street at 1225 13<sup>th</sup> Street, N.W., submitted a letter in opposition to the proposed use. In the letter they stated that the type of use that is being proposed in the application would not be consistent with the current uses and needs of the neighborhood. They stated that the proposed use would generate high volumes of traffic, noise and an increase in drug trafficking and other criminal activity, which would be detrimental to the neighborhood.

### **FINDINGS OF FACT:**

Based on the evidence of record, the Board finds as follows:

- (1) The proposed use was also the prior use of the subject site. However, the prior use predated the current SP-2 zone district designation and the certificate of occupancy was allowed to lapse.
- (2) The SP-2 zone district is currently guiding neighborhood revitalization in the right direction. The granting of this use could ultimately have a detrimental effect on the direction that revitalization is currently taking in the neighborhood.

### **CONCLUSIONS OF LAW AND OPINION:**

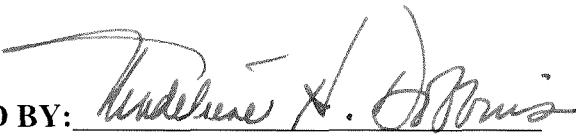
Based on the application before the Board, the Board concludes that the applicant is seeking a variance from the use provisions to allow an auto tire and battery service on the lot, basement, first and second floors of property located in an SP-2 District. The granting of such a use variance requires a showing through substantial evidence of a unique or exceptional situation or condition affecting the property that would create an undue hardship for the owner in complying with the Zoning Regulations. The applicant must also demonstrate that granting the application will not be of substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan. The Board concludes that the applicant has not met the burden of proof.

The Board is of the opinion that the neighborhood in which the project is proposed is in transition and experiencing revitalization, encouraged by the SP-2 designation. The Board is therefore of the opinion that to allow a use that existed before the rezoning to be reestablished in the new zone district (SP-2), could prove to be detrimental to the current direction of the ongoing neighborhood revitalization. This would impair the intent, purpose and integrity of the Zoning Regulations. Having made this determination, the Board concludes that it is unnecessary to address the other use variance tests.

In light of the foregoing analysis, the Board **ORDERS** that the application be **DENIED**.

**VOTE: 5-0** (Laura M. Richards, Angel F. Clarens, Susan Morgan Hinton and Sheila Cross Reid to deny; John G. Parsons to deny by absent vote).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

ATTESTED BY:   
**MADELIENE H. DOBBINS**  
Director

**FINAL DATE OF ORDER:** MAR 16 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 16126**

As Director of the Board of Zoning Adjustment, I certify and attest that on  
MAR 16 1998 a copy of the order entered on that date in this matter was  
mailed first class, postage prepaid to each party who appeared and participated in the public  
hearing concerning this matter, and who is listed below:

Benny L. Kass, Esquire  
Kass and Skalet  
1050 17<sup>th</sup> Street, N.W., #1100  
Washington, D.C. 20056

Keyvan Ahdut  
11207 Healy Street  
Silver Spring, Maryland 20902

Helen Kramer, Chairperson  
Advisory Neighborhood Commission 2F  
1325 13<sup>th</sup> Street, N.W., #25  
Washington, D.C. 20005

Attested By:

A handwritten signature in dark ink, appearing to read "Madeline H. Dobbins", written over a horizontal line.

**MADELIENE H. DOBBINS**  
**Director**

Date: MAR 16 1998

attest/ljp